**HIGH COURT OF UTTARANCHAL AT NAINITAL**

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. A.O. 927 of 2001

The New India Assurance Company (Appellant)

Vs.

Smt. Jadaiya & others (Respondents)

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 30.7.2004

Initial of Judge

**HIGH COURT OF UTTARAKHAND AT NAINITAL**

A.O. No. 927 of 2001

(Old No. 700 of 1988)

The New Indian Assurance Company ..... Appellant

Versus

Smt. Jadaiya & others ..... Respondents

Sri T.A. Khan, Advocate for the appellant
Sri J.C. Joshi, Advocate for the respondents.

Dated: 30.7.2004

**Hon. Rajesh Tandon, J.**

Heard the learned counsel for the parties.

Present appeal has been filed against the judgment and award dated 11.5.1988 passed by the Motor Accident Claims Tribunal, Nainital.

Briefly stated the facts giving rise to the present appeal are that the respondent Smt. Jadaiya, who died during the pendency of the appeal and in her place Sri Ram Prasad has been substituted, has filed a claim petition for the grant of compensation on account of death of her son Babu Ram in a motor vehicle accident on 1.10.1985 near village Talli, Tehsil Kashipur, involving truck No. DHG 4355. The petitioner has alleged that deceased along with his brother Ram Prasad was going towards Kashipur on foot, as soon as they reached near village Talli, the truck No. DHG 4355 which was being driven

rashly and negligently hit Babu Lal and he succumbed to the injuries sustained in the accident at the spot. The petitioner has claimed a compensation of Rs.1,50,000/-.

The petition has been contested by the opposite parties who filed their written statements.

On the pleadings of the parties the following issues were framed:

(1) Whether the accident took place due to rash and negligent driving of Truck No. 4355?

(2) Whether the respondent was himself responsible for the accident?

(3) To what amount of compensation is the petitioner entitled?

The claims tribunal on the basis of ocular testimony of eyewitness P.W.2 Dhanram has held that the accident took place due to rash and negligent driving of the truck in question. The claims Tribunal has held that the deceased was working a labourer. He assessed the monthly income of the deceased as Rs.600/- or Rs.7,200/- per annum. The deceased was aged about 22 years at the time of accident. The Claims Tribunal has assessed compensation of Rs.1,00,000/- one lakh and decreed the petition accordingly. Feeling aggrieved against the order the insurance company has preferred the present appeal.

The claims Tribunal on the ocular testimony of eye-witness of the accident P.W.2 Dhan Ram has given categorical findings that the accident took place due to rash and negligent driving of the truck driver. The opposite parties have adduced no evidence in support of their contention that the accident took place due to the negligence of the deceased himself. The age of the deceased at the time of accident was 22 years and he

was earning a sum of Rs.600/- per month. Thus keeping in view the age and income of the deceased the amount of compensation assessed by the Claim Tribunal is proper and justified. I find no illegality or infirmity in the order passed by the Claims Tribunal.

However, the respondent claimant has prayed that the amount of award deposited in the fixed deposit be paid to him. The claimant respondent shall be at liberty to apply for withdrawal of the amount of award before the Motor Accident Claims Tribunal concerned, who shall consider the application and pass appropriate orders according to law.

In view of the aforesaid fact, the appeal has no force and is hereby dismissed. No order as to costs.

**(Rajesh Tandon, J.)**

**30.7.2004**

* Dhyani